

Ch. 108, L. 1967

MT LEGISLATIVE HISTORY

Year

1967

Bill #

HB 245

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H. Committee on

Appropriations
Do Pass

S. Committee on

Finance & Claims

Hearing Date(s)

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Did this bill originate in an interim committee?

Yes

No

Committee

Minutes

Report

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Mr. Sorte explained that the bill asked for \$1,000 in dues in the Council of State Government. The bill was passed because there seemed to be a need for an organization to help the states cooperate and coordinate one through which the states can get together and take concerted action on similar problems. (The organization's publications and management are explained further in the two booklets which are included in the committee minutes.) The annual dues for Montana have been \$3600 per year or a total of \$7200 per biennium. This finances their central office in Chicago where they maintain a research library as well as several regional offices throughout the country. This year, Mr. Sorte, explained, they have asked for an increase in the Montana contribution. This contribution is based on population.

House Bill 303 was brought before the committee. Mr. Sorte explained the appropriation for this bill to the committee. This is a direct appropriation from the Legislature to the Legislative Council for their operation during the coming biennium. This budget is not reviewed by the budget director; they give him an estimated proposal for the budget book. (The detailed breakdown is attached.) There is a 21.4 increase on the appropriation last year in the legislative research from \$102,027 to \$124,866 which is requested. In the salary item there is requested \$41,949 for the first year and \$33,075 the second year. Three months of staff salaries are charged to bill drafting. The travel request has been increased. Under out-of-state travel, \$1,000 in each year of the biennium is requested. This is an increase over what was budgeted and over what was spent. The \$1,000 amount is intended to allow two or three legislators to attend meetings out of state. This year only one legislator attended which is why the amount from last year was not entirely spent. Under contracted service Mr. Sorte said there was an item of \$27,096 for the IBM MTST machine. He felt they could possibly delete this item from the request as the Senate is contemplating the purchase of two of these machines and if the purchase was made the Legislative Council could use these during the interim. The machine they now have is on a trial basis.

Mr. Sorte explained that since the Legislative Council meets every month the office itself actually has month by month supervision in the expending of its appropriation. After a brief discussion Mr. Sorte was excused.

House Bill 245 was brought before the committee. The mimeographed copies of the bill were not yet prepared and the committee was hampered considerably by not having copies of the bill at hand. Nevertheless, Dr. John Anderson of the Health Department, Sam Chapman of the Planning Board and Representative Ray Loman appeared on behalf of the bill and explained its purpose to the committee.

Mr. Loman: This is a result of an act by the U. S. Congress which authorizes the supervision of the use of isotopes and fissionable material. While there is no great need for this thing right now the way things are moving we don't know when this thing will be very necessary to us. The states around us have enacting legislation which enables the states to have control, jurisdiction and supervision and the knowledge of what is going on.

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Dr. Anderson: I think the thing we should underline is that this would be enabling legislation. I think there are certain wordings in the present bill as it is written that should be changed so that this would be "enabling" legislation rather than "mandatory". The Atomic Energy Commission gives licenses for the use of physicians, power companies and many others. In Montana we have no legal control ourselves for any type of ionizing radiation. We have made recommendations regarding x-ray machines, etc. but we do not have anyone full-time assigned to radiation control. I would recommend that in Section 3, sub-section 3, the wording should be changed from "The State Board of Health shall" to read "the State Board of Health may".

Mr. Chapman: In the Lemhi Pass down by Dillon, this entire area is full of thorium. This area is also rich in rare earth, at the present time we have found 17 different rare earths, one of these being eroperium which is used in the manufacture of color TV tubes. Mr. Chapman said that Idaho is carrying out a successful program in this area and Montana is losing a good deal of the economic value by not being able to participate in this field. We are not in a position at this time, he said, to carry out this program the way we would like to. It would require a considerable amount of money to do so. I want to say, he continued, that we are within possibly two years of this now. If we don't have the proper control, if we don't have the proper type of engineering, we are going to be in a position of closing the barn door after the horse is gone. The economic impact would be in the neighborhood of 50 million dollars. Before we can get any contracts with the Atomic Energy Commission we must have control.

A discussion followed in this area in which the members of the committee had several questions about the operation of this office as well as the procedures used in obtaining and processing these rare earth materials. Dr. Anderson gave the committee a breakdown of proposed costs which would be involved in setting up this control office in the Health Department. (This is attached in the committee book.) Dr. Anderson said this would call for a nine member advisory council. In addition, an equivalent amount would be available from the federal government. The first year would involve quite a bit of survey work which would be an initial expense.

Mr. Ben Wake, Industrial Hygienist with the Health Department, told the committee that there are 20 or 30 individuals or organizations which are using radiation materials, this is in addition to x-ray machines. There are several hundred who are licensed to use materials in Montana but who do not reside here, for example the lumbering companies. The large percentage would be those who are residents outside of Montana and in my opinion would need a closer look than those who reside here. I feel this type of legislation would be good for Montana from the public health standpoint as well as the economic

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As the House was being called into session, the meeting was adjourned. The Chairman said since the mimeographed bills were not available for this meeting that he would like to have another meeting on House Bill 245 when the copies were available. The meeting was adjourned.

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HOUSE BILL 245

This bill could well be titled, "The Montana Radiation Protection Act".

The intent and purpose of this bill can be summarized in a single sentence. It establishes a regulatory program designed to protect the health and safety of the people against radiation hazards, thereby encouraging the constructive uses of radiation.

Before proceeding further, it would be well to divide the sources of radiation into two categories.

In the first category is radiation coming from X-ray machines and radium. At the present time there is no regulation of these sources in Montana.

In the second category are those sources of radiation regulated by the federal government. Under the Atomic Energy Act, the Atomic Energy Commission was empowered to regulate source materials (uranium and thorium), special nuclear materials (uranium 233, uranium 235, and plutonium) and by-product materials (radioisotopes). Any person using any of these materials would need to secure a license from the Atomic Energy Commission. Most of the licensees in Montana use radioisotopes. Examples would be radioactive cobalt used for treating cancer, radioactive iodine used to diagnose diseases of the thyroid, and radioisotopes used by petroleum companies in the exploration of oil fields.

The Atomic Energy Law has a provision which makes it possible for the Atomic Energy Commission to turn over certain of its regulatory powers to a state. The transfer is effected by an agreement between the A.E.C. and the Governor. The agreement is contingent upon the state's authority and ability to protect the public against the hazards of radiation by regulations and a workable program.

The language of H.B.-245 is such that it would meet the criteria of the A.E.C. in this regard. I will leave a copy of the criteria with the Committee.

Some of the language may seem strange to you and I will try to explain any

questions you have to the best of my limited ability.

The bill talks about "general" and "specific" licenses. I believe that I can explain these by way of examples. A "general" license would be issued to a person such as a physician who in the course of his practice might need to own and use X-rays, radium, and other radioactive materials. He would not need to get the state's permission each time he bought a new X-ray machine. He would have this authority on a continuous basis under the provisions of his "general" license.

The "specific" license really refers to the type of license a person would now receive from the A.E.C., but which under this bill now would be given by the state, when and if the state reaches an agreement with the A.E.C.

Why should Montana pass H.B.-245? I would like to leave you with a copy of a report from the State of Kentucky. Kentucky passed such an Act, and Kentucky has been very happy that she did. The report gave several reasons why the state should exert itself in this field.

1. If the state did not move to assume its authority, there is the possibility of a federal monopoly over these materials. With a Radiation Protection Act, the state has the opportunity to actively participate in the regulation and development of these important ^{tools} ~~parts~~ of industry and medicine.
2. Decentralization of the licensing and regulatory functions from the federal to state level facilitates a better understanding of the user's problems and swifter service in issuing licenses.
3. The same closeness to the user better protects the health and safety of the citizens of the state.
4. Industry would prefer dealing with a knowledgeable state agency and will be attracted to those states which have regulation and understanding of their problems.

The bill has both permissive and mandatory features. The mandatory language is used in the provisions that relate to radiation now regulated by the A.E.C.

I believe that the intent of this bill is to permit, but not to require the State Board of Health to regulate X-ray equipment and radium. For example, under Section 6, Sub-section (6) it says, "The board of health may require registration and inspection of persons dealing with sources of ionizing radiation which do not require a specific license...." Furthermore, Sub-section (7) of the same Section authorizes the State Board of Health to exempt certain users from licensing or registration requirements.

With this in mind, I think the intent of this bill will be better served if the word "may" be substituted for the word "shall" in the first sentence of Sub-section (3) of Section 4 (top of Page 3 of the mimeographed bill). This particularly pertinent to Paragraph (c) of this Sub-section. The Board of Health, after consultation with the Radiation Advisory Committee may deem it desirable to regulate "other sources of ionizing radiation", but the present written language would require such regulation.

The program under this Act would not be expensive. It would require a single full time person who was knowledgeable in the field of radiation protection. Such persons are generally called "health physicists". Most "health physicists" have taken two year courses at a University and have earned Master's Degrees. The State Board of Health does not have a personnel classification for a health physicist. We would estimate that an annual salary of approximately \$12,000 would be needed to hire a competent health physicist. He should not only be able to conduct the regulation program, but also serve as a consultant to those who wish to promote atomic energy development in Montana.

I have written a suggested budget for this program which I will append to my statement. You will note that anticipated federal funds would cover half of the cost of this program.

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CRITERIA
FOR GUIDANCE OF STATES AND THE AEC IN THE
DISCONTINUANCE OF AEC REGULATORY AUTHORITY OVER
BYPRODUCT, SOURCE AND SPECIAL NUCLEAR MATERIALS
IN QUANTITIES NOT SUFFICIENT TO FORM A CRITICAL MASS
AND THE ASSUMPTION THEREOF BY STATES
THROUGH AGREEMENT

INTRODUCTION

1. These criteria were developed to implement a program, authorized by PL 86-373, which was enacted in the form of a new section to the Atomic Energy Act (Section 274) and approved by the President on September 23, 1959. Under provision of this Amendment, when an agreement between a state and the AEC is effected, the Commission will discontinue its regulatory authority within that state over one or more of the following materials: byproduct material (radioisotopes), source material (uranium and thorium) and special nuclear material (uranium 233, uranium 235 and plutonium) in quantities not sufficient to form a critical mass.
2. An agreement may be effected between a state and AEC: (1) upon certification by the governor that the state has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement and the state desires to assume regulatory responsibility for such materials; and (2) the AEC makes a finding that the state program is compatible with the Commission's program for the regulation of such materials, and is adequate to protect the health and safety with respect to the materials covered by the proposed agreement.
3. After discussions with various state officials and other state representatives, the Atomic Energy Commission drafted proposed criteria to provide guidance and assistance to the states and the AEC in developing a regulatory program which would be compatible with that of the AEC. The criteria were circulated among states, Federal agencies, labor and industry, and other interested groups for comment.
4. On August 22 and 23, 1960, the Commission's Advisory Committee of State Officials met in Washington, D. C., at which time the members expressed their views with respect to the proposed criteria and evaluated the comments which had been received as of that date. The proposed criteria were rewritten after full consideration of the Committee's recommendations and comments received subsequent to the meeting.

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5. The criteria require that the state authority consider the total accumulated occupational radiation exposure of individuals. To facilitate such an approach, it is the view of the AEC that an over-all radiation protection program is desirable. The maximum scope of each state's radiation protection program is not, however, a necessary or appropriate subject for coverage in the criteria. Consequently, the criteria are silent on the question of whether a state should have a total regulatory program covering all sources of radiation, including those not subject to control by the AEC under the Atomic Energy Act, such as X-rays, radium, accelerators, etc.

6. Inquiries about details of the criteria or other aspects of the AEC's Federal-State Relations Program should be addressed to the Division of State and Licensee Relations, U. S. Atomic Energy Commission, Washington, D. C. 20545.

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CRITERIA
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THROUGH AGREEMENT^{1/}

OBJECTIVES

1. Protection, Development. A state regulatory program shall be designed to protect the health and safety of the people against radiation hazards, thereby encouraging the constructive uses of radiation.

RADIATION PROTECTION STANDARDS^{2/}

2. Standards. The state regulatory program shall adopt a set of standards for protection against radiation, which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.

3. Uniformity in Radiation Standards. It is important to have uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by Part 20 of the AEC regulations based on officially approved radiation protection guides.

For the past 30 years, the National Committee on Radiation Protection and Measurements (NCRP) has been studying the entire area of permissible radiation dose, and during that time has made recommendations on the permissible radiation exposure. It has been the policy of the Atomic Energy Commission to follow recommendations of the NCRP. Since the establishment of the Federal Radiation Council in 1959, the AEC follows the recommendations of the Council, as approved by the President. The basic radiation exposure standards in 10 CFR Part 20 represent the legal adaptation of these recommendations.

4. Total Occupational Radiation Exposure. The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.

^{1/}As adopted in February 1961, and amended in November 1965.

^{2/}Suggested state regulations and state legislation will give content to all as enunciated.

5. Surveys, Monitoring. Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.

6. Labels, Signs, Symbols. It is desirable to achieve uniformity in labels, signs and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.

7. Instruction. Persons working in or frequenting controlled areas^{3/} shall be instructed with respect to the hazards of excessive exposure to radioactive materials and in precautions to minimize exposure.

8. Storage. Licensed radioactive material in storage shall be secured against unauthorized removal.

9. Waste Disposal. The standards for the disposal of radioactive materials into the air, water, and sewers, and burial in the soil shall be in accordance with Part 20. Holders of radioactive material desiring to release or dispose of quantities in excess of the prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

10. Regulations Governing Shipment of Radioactive Materials. The state shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the Federal Government (AEC, Interstate Commerce Commission, Federal Aviation Agency, Treasury Department (Coast Guard), and Post Office) whose jurisdiction over interstate shipment of such materials necessarily continues.

11. Records and Reports. The state regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of his exposure to radiation; (e) at request of an employee advise him of his annual radiation exposure; and (f) inform each employee in writing when he has received radiation exposure in excess of the prescribed limits.

^{3/} "Controlled area" means any area access to which is controlled by the licensee for the purpose of radiation protection. "Controlled areas" shall not include any areas used as residential quarters, although a separate room or rooms in a residential building may be set apart as a controlled area.

12. Additional Requirements and Exemptions. Consistent with the over-all criteria here enumerated and to accommodate special cases or circumstances, the regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.

PRIOR EVALUATION OF USES OF RADIOACTIVE MATERIALS

13. Prior Evaluation of Hazards and Uses, Exceptions. In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing re-appraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups--those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

14. Evaluation Criteria. In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls.

15. Human Use. The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally, licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.

INSPECTION

16. Purpose, Frequency. The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority.

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Inspection and testing is conducted to determine, and to assist in obtaining, compliance with regulatory requirements.

Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

17. Inspections Compulsory. Licensees shall be under obligation by law to provide access to inspectors.

18. Notification of Results of Inspection. Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

ENFORCEMENT

19. Enforcement. Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials; the obtaining of injunctive relief; and the imposing of civil or criminal penalties.

PERSONNEL

20. Qualifications of Regulatory and Inspection Personnel. The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected. This requires competency to evaluate various potential radiological hazards associated with the many uses of radioactive material and includes concentrations of radioactive materials in air and water, conditions of shielding, the making of radiation measurements, knowledge of radiation instruments--their selection, use and calibration--laboratory design, contamination control, other general principles and practices of radiation protection, and use of management controls in assuring adherence to safety procedures.

To perform these functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in

radiation protection. For example, the person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection. It is desirable that such a person have a bachelor's degree or equivalent in the physical or life sciences, and specific training in radiation protection.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These people should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, the trainee could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

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SPECIAL NUCLEAR MATERIAL

21. Conditions Applicable to Special Nuclear Material. Nothing in the state's regulatory program shall interfere with the duties imposed on the holder of the materials owned by the AEC, for example, the duty to report to the AEC, on AEC prescribed forms (1) transfers of special nuclear material, and (2) periodic inventory data.

22. Special Nuclear Material Defined. Special nuclear material, in quantities not sufficient to form a critical mass, for present purposes means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235, uranium 233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination should not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and is within the formula, as follows:

$$\frac{175 \text{ (grams contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

(This definition is subject to change by future Commission rule or regulation.)

ADMINISTRATION

23. State practices for assuring the fair and impartial administration of regulatory law, including provision for public participation where appropriate, should be incorporated in procedures for:

- a. Formulation of rules of general applicability;
- b. Approving or denying applications for licenses or authorization to possess and use radioactive materials; and
- c. Taking disciplinary actions against licensees.

ARRANGEMENTS FOR DISCONTINUING AEC JURISDICTION

24. State Agency Designation. The state should indicate which agency or agencies will have authority for carrying on the program and a summary

of the legal authority. There should be assurances against duplicate regulation and licensing by state and local authorities, and it may be desirable that there be a single or central regulatory authority.

25. Existing AEC Licenses and Pending Applications. In effecting the discontinuance of jurisdiction, appropriate arrangements will be made by AEC and the state to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications, by reason of the transfer. For example, one approach might be that the state, in assuming jurisdiction, could recognize and continue in effect, for an appropriate period of time under state law, existing AEC licenses, including licenses for which timely applications for renewal have been filed, except where good cause warrants the earlier re-examination or termination of the license.

26. Relations with Federal Government and Other States. There should be an interchange of Federal and state information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.

27. Coverage, Amendments, Reciprocity. An agreement providing for discontinuance of AEC regulatory authority and the assumption thereof by the state may relate to any one or more of the following categories of materials within the state, as contemplated by Public Law 86-373:

- a. byproduct materials,
- b. source materials,
- c. special nuclear materials in quantities not sufficient to form a critical mass;

but must relate to the whole of such category or categories and not to a part of any category. If less than the three categories are included in any discontinuance of jurisdiction, discontinuance of AEC regulatory authority and the assumption thereof by the state of the others may be accomplished subsequently by an amendment or by a later agreement.

The agreement may incorporate by reference provisions of other documents, including these criteria, and the agreement shall be deemed to incorporate without specific reference the provisions of PL 86-373 and the related provisions of the Atomic Energy Act.

Arrangements should be made for the reciprocal recognition of state licenses and Federal licenses in connection with out-of-the-jurisdiction operations by a state or Federal licensee.

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18. AEC Contractors. The state should provide exemptions for AEC contractors which are substantially equivalent to the following exemptions:

a. Prime contractors performing work for the AEC at U. S. Government-owned or controlled sites;

b. Prime contractors performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof;

c. Prime contractors using or operating nuclear reactors or other nuclear devices in a U. S. Government-owned vehicle or vessel; and

d. Any other prime contractor or subcontractor when the state and the AEC jointly determine (i) that, under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety and (ii) that the exemption of such contractor or subcontractor is otherwise appropriate.

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**THE ATOMIC ENERGY COMMISSION'S FEDERAL-STATE
PROGRAM AND ITS IMPACT ON THE UTILIZATION OF
NUCLEAR MATERIALS IN KENTUCKY**

**Paper based on a speech delivered before
the Fifth Annual Meeting of the Institute
of Nuclear Materials Management, May 5,
1964, Penn-Sheraton Hotel, Pittsburgh,
Pennsylvania.**

James N. Neel, Jr.*

***Attorney, Ashland Oil & Refining Company,
Ashland, Kentucky; Former Executive Director,
Kentucky Atomic Energy and Space Authority,
Frankfort, Kentucky.**

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PURPOSE

The purpose of this paper is to explain Public Law 86-373, now Section 274 of the Atomic Energy Act of 1964, as amended; examine the negotiation and execution of an AEC-State Agreement pursuant to provisions of the amendment; review the existing status of states that have negotiated agreements and are now negotiating agreements; and attempt to ascertain the impact of Section 274 on the utilization and control of radiation sources since the law was enacted on September 23, 1959.

BACKGROUND

The Atomic Energy Act of 1954 opened the era of private participation in the peaceful development of atomic energy in the United States. The Atomic Energy Act of 1946, now superseded by the 1954 act, failed to provide for private participation but sustained the federal monopoly which grew from military applications of nuclear energy.

The act provides for federal regulation of source material (uranium and thorium), byproduct material (radioisotopes), and special nuclear material (Uranium 233, U-235 and plutonium), and prohibits generally the possession or use of these materials except under license from the AEC. The act also provides that special nuclear material shall be the property of the United States, regardless of whether it is produced in federally or privately owned facilities with the result that the user possesses the material only - title at all times remaining in the federal government.

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Certain radiation sources, not covered by the act, have never been regulated by the AEC or any other federal agency. These sources include natural radiation emitting elements such as radium, X-ray and gamma ray machines, and radioisotopes produced in high energy machines such as particle accelerators. Regulation of these radiation sources has always been left to the states.

FEDERAL-STATE JURISDICTION AND PUBLIC LAW 86-373

With respect to health and safety the 1954 act did not expressly state whether Congress intended to allow state regulation of sources of ionizing radiation licensed by the AEC. The constitutional question was posed by many as to whether Congress has preempted the field of health and safety regulations pertaining to byproduct, source and special nuclear material to the exclusion of the states or whether a state could adopt concurrent non-conflicting regulations applicable to AEC licensees.

Demands for Congressional clarification arose due to increasing interests, activities, and the actual promulgation of regulations by many state governments. These demands culminated in hearings held in May 1959 on certain proposals to amend the act to delineate the respective areas of jurisdiction and to provide for the gradual assumption by the states of some of the AEC's responsibility. The result was the enactment of Public Law 86-373, "Cooperation with States."

The declared purpose of Public Law 86-373 is to provide for:

1) Recognition of the interests of the states in the peaceful uses of atomic energy and the need for clarification of responsibilities of the states and the Commission;

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- 2) The need for cooperation and establishment of programs relating to control of radiation hazards;
- 3) The promotion of an "orderly regulatory pattern" between the AEC and the states;
- 4) Establishment of procedures and criteria for discontinuance of the Commission's regulatory responsibilities over byproduct, source and special nuclear material in quantities less than a critical mass and assumption of those responsibilities by the states;
- 5) Coordination of the development of radiation standards for guidance of federal agencies and cooperation with the states; and
- 6) A recognition that as the states improve their capability to deal with byproduct, source, and special nuclear materials in quantities less than a critical mass, other areas of regulation may be transferred.

METHOD OF TRANSFER

Discontinuance of the AEC's authority over these materials is accomplished in three basic steps: First, the governor of a state certifies that the state has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials covered by the agreement and that it is the desire of the state to assume regulatory responsibility. The Commission then evaluates the state program in order to make a finding as required by Public Law 86-373 that the state program is compatible with the Commission's program for the regulation of the materials and that the state program is adequate to protect the public health and safety. Negotiations terminate with the execution by the governor and Commission officials of an agreement providing for the

discontinuance of the regulatory authority of the Commission over the specified materials and the assumption of such regulatory authority by the state.

Certain areas of jurisdiction are specifically reserved to the federal government. No agreement may be entered into with regard to discontinuance of the Commission's authority over: the construction and operation of a production or utilization facility; the export from or import into the United States of byproduct, source, or special nuclear material; the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulation or orders of the Commission; the disposal of such other byproduct, source, or special nuclear materials which, because of the hazards or potential hazards thereof, the Commission determines by regulation or order should not be so disposed of without a license from the Commission; and special nuclear materials in quantities sufficient to form a critical mass.

Termination of the agreement could occur in two circumstances: First, at the request of the governor of the state and secondly, if the Commission, after reasonable notice and opportunity for hearing to the state finds that termination or suspension is required to protect the public health and safety.

Other sections provide for AEC-state agreements for the performance of inspections or other functions on a cooperative basis and for the Commission to provide such training to employees of, and other assistance to, state and local governments as the Commission deems appropriate. The Act also established the Federal Radiation Council for the purpose of

advising the President with respect to radiation matters including guidance for all federal agencies in the formulation of radiation standards and in establishment and execution of programs of cooperation with the states.

FEDERAL CRITERIA FOR TRANSFER

The first step taken by the Commission to implement Public Law 86-373 was the development of a "Proposed Criteria for Guidance of States and the AEC in the Discontinuance of AEC Authority over Byproduct, Source, and Special Nuclear Materials in Less than a Critical Mass and the Assumption thereof by States through Agreements." The criteria was developed by a select Task Force on Federal-State Relations within the AEC and are based on an exhaustive analysis of AEC and other federal agencies' regulatory programs for the control of hazards associated with the possession and use of byproduct, source, and special nuclear materials.

Some twenty-nine items are listed which are utilized by the AEC in evaluating a state regulatory program to determine its compatibility with the federal regulatory program and its adequacy to protect the health and safety of citizens as required by Public Law 86-373. The criteria by which each program is evaluated may be divided into nine basic categories: (1) Objectives; (2) Radiation protection standards; (3) Prior evaluation of uses of radioactive materials; (4) Inspection; (5) Enforcement; (6) Personnel; (7) Special nuclear material; (8) Administration; and (9) Arrangements for discontinuing AEC jurisdiction.

From an analysis of these criteria it is clear that while a state regulatory program does not have to be identical with the federal program, a degree of uniformity is intended to afford as little disruption as possible

with the manner and scheme of the present federal program. This is, of course, essential so that by the ensuing transfer no harm will be done to the industry which has grown and lived with the federal pattern of control since its inception.

In the atomic energy field where one can not talk of development without regulation, it is essential that regulation take into account the benefits that will accrue to society from the peaceful and constructive uses of radiation and the hazards to the health and safety of the public arising out of those uses. Without a consistent and compatible scheme of regulation prior and subsequent to transfer of control to the states over certain of these materials, discord and uncertainty would undoubtedly occur which could affect, to a considerable degree, the utilization of nuclear materials. Thus, the criteria are designed to secure a course of control developed by the Commission from experience which should serve as an adequate and effective method of regulating the possession and use of these materials to foster development and protect the health and safety of citizens of a state from harmful exposure.

STATE RADIATION CONTROL ACT

In order to give substance to the criteria a Model State Enabling Act was developed based primarily on the criteria. In its early stage of drafting by the AEC, the Council of State Governments was contacted and through its offices the act was commented upon, amended, and clarified by various national and state groups including the National Association of Attorneys General, the Advisory Committee of State Officials to the AEC,

the Committee of State Officials on Suggested State Legislation and other interested parties.

The act provides for the adoption of certain basic definitions, a licensing and registration program for sources of ionizing radiation, inspection of licensees, record keeping, authorization for the Governor to enter into the Federal-State Agreement, arrangements for discontinuance of AEC authority, inspection agreements and training programs, consistency of all laws relating to material covered by the agreement with local and municipal laws, administrative procedure and judicial review, injunction proceedings, prohibited uses of sources of ionizing radiation unless licensed or registered, and the impounding of materials and penalties.

The act also contains a number of alternative administrative arrangements to meet the needs, legal requirements and organizational patterns of any state, and covers not only those materials which are transferred by the agreement but all sources of ionizing in order to take into cognizance those radiation sources presently under state control.

Thus, a state desiring to enter negotiation with the AEC may, as a first step, evaluate its position in line with a substantive act based on the criteria which have been subjected to exhaustive examination by various state agencies and groups.

THE KENTUCKY PROGRAM

Kentucky's decision to assume regulatory responsibility over byproduct, source and special nuclear materials in quantities less than a critical mass pursuant to Public Law 86-373 was based on a variety of reasons. The first motivating consideration was the conviction that if

the states did not move to assume the authority, a strong possibility existed for a reassertion of the federal monopoly over these materials, and consequently the opportunity for the states to participate actively in the regulation and development of these important tools of industrial, medical and agricultural advancement would be relinquished.

Secondly, decentralization of the licensing and regulatory function from the federal to state level could create a more favorable climate for the development and use of these materials due to the state regulatory agency's closeness to the user, thereby facilitating a better understanding of the user's problems and rendering of better and swifter service in issuing licenses and granting amendments. The over-all effect being a stimulation of the development and utilization of these materials by science and industry.

Also, this same closeness to the user would render better health and safety protection to the citizens of the state from hazards associated with radiation and stimulate the states to develop programs covering all sources of ionizing radiation to provide a complete radiological health program. The assumption of this responsibility would place back in the state control over hazards to health within its environment which have traditionally been subject to state police powers.

Another factor was an economic one based on the belief that the atomic energy industry will continue to grow at a rapid rate and that the licensing power could be utilized as an attraction to nuclear and nuclear-related activities to locate within the state since industry would undoubtedly prefer the time and cost-saving advantages of dealing with a

decentralized agency in obtaining and amending licenses for the possession and use of these materials.

Some 26 months have elapsed since the execution of the first agreement between Kentucky and the Commission. Has Kentucky's position been vindicated? Do licensees in the state like the system? Has growth occurred in the utilization of byproduct, source and special nuclear materials? Has the program attracted nuclear industry? All of these questions can be answered positively. The program in Kentucky has not only been a success, but I believe the results border on the spectacular. Consider these statistics:

1) In 26 months there has been almost a 100% increase in the number of licenses for the possession and use of byproduct, source and special nuclear materials. At the time of transfer, the total number of licenses number 85. Today, there are 165 licenses despite the fact that even this number does not reflect actual usage growth because there has been a reduction of the number of licenses by combining certain users under one broad license.

2) Users in the state, be they medical, industrial, or research oriented, have been unanimous in their acclaim for the better and faster service in granting and amending their licenses and in the operation of a more flexible local program more in tune with their needs. This, despite the fact that a majority were skeptical if not opposed to the transfer at the outset.

3) Within several months of the execution of the agreement, Nuclear Engineering Company, Inc. of Pleasanton, California, announced its

intention to locate a Nuclear Service Center in Kentucky offering low-level waste disposal, decontamination and laundry services to the nuclear industry of the Eastern half of the United States. The state licensing action, including voluntary liaison and coordination with the AEC, took only six months from start to finish. The firm had to wait almost two years in a similar licensing action in Nevada with the AEC despite the fact that the problems of site hazard evaluation were far more complex in Kentucky. The Company has buried over 100,000 cubic feet of waste to date at the site. In the negotiation with Nuclear Engineering the Kentucky Atomic Energy Authority acquired title to the site, valued at approximately \$50,000. Also, the Authority receives .05 a cubic foot for each cubic foot of low-level radioactive waste buried under terms of a lease executed with the Company for operation of the site. Thus, the Authority which had a 1962-63 budget of \$49,000 acquired a \$50,000 asset and an annual income of approximately \$5,000 from burial charges in its first year of operation due primarily to Kentucky's power to license.

4) The increase in protection of the health and safety to the public and workers from all sources of ionizing radiation has also been dramatic. All 3,000 users of X-ray facilities and equipment in Kentucky have been registered and 1/5 of these have been visited. Every user of byproduct, source and special nuclear materials has been visited at least once. The average agreement materials user program review to date is 1.6 visits per two years. In contrast, the AEC visit frequency was approximately 0.1 visits per two years. The Kentucky staff has increased from four to ten during the past 26 months with an annual budget of \$100,000.00.

5) By the creation of the Kentucky AEA with its broad powers to aid the establishment of nuclear-based industry in conjunction with state licensing, cost and time saving factors are offered to lure nuclear activities to Kentucky. The Authority has also carried on many statewide educational and public information programs to convey truth and promote right thinking about the benefits as well as the potential hazards of the peaceful atom to laymen.

Since the presentation of the Kentucky proposal and the subsequent execution of the agreement transferring control to the state, other states have executed similar agreements while others are in various stages of preparation or actual negotiation with the Commission. According to a March, 1964 release by the Commission's Division of State and Licensee Relations, six states have executed agreements: Kentucky, Mississippi, California, New York, Texas and Arkansas. Florida is scheduled to execute this year.

The annual budget for the six agreement states is 1.4 million. Total capital outlay for nonexpendable equipment is \$875,000. There are a total of 102 professional, 29 semi-professional and 34 clerical persons employed in radiological health programs in the six agreement states. Twenty-four additional state legislatures have enacted enabling legislation to provide for negotiation of the agreement and administration of a state regulatory program covering agreement materials and nineteen states have some form of central agency dealing with nuclear development and/or regulatory matters.

Are there potential or actual problem areas that the nuclear industry should concern itself with prior or subsequent to the transfer

process? Yes, there are. However, before enumerating these it would be well to point out that these are potential problems that have not arisen in the states that have executed agreements with the Commission primarily because of the splendid cooperation between the AEC and the states. The potential problem areas are: Continuing compatibility of state programs with the Federal program after execution of an Agreement; uniformity of standards; and reciprocal recognition of licenses. Space will not permit a complete evaluation of each of these potential problem areas; however, there exists a rather simple suggestion that might remedy these speculative problems.

The amendment to the Act permitting the transfer establishes the Federal Radiation Council to act as an advisory body to the President and the Federal agencies in the setting of radiation standards. Since over 20% of the control over byproduct, source and special nuclear material licensees has been transferred to the states to date, would it not be reasonable to think of amending Section 274 of the Act to provide for a Federal-State Radiation Council with the responsibility of advising all Federal and State agencies in the setting of uniform standards and serving as a national forum for discussion and solution of problems involved in the regulation and control of radiation hazards including those involved in the transfer process?

One fact is extremely important to all that are interested in the rapid development of a private nuclear industry and that is, of course, the necessity for the establishment and maintenance of public understanding and acceptance of the peaceful atom. All factions, Government, industry,

education, labor, etc. must work more closely together to accomplish this acceptance. Perhaps the main long-range accomplishment of the Federal-State program will be to allay the unfounded fear and prejudiced opinions that confront the healthy growth of the nuclear industry today by bringing radiation, its potential benefits as well as its hazards, into proper perspective as another tool of human advancement that should now be accommodated public acceptance. Let the states carry truth and perspective concerning the atom to the people who have traditionally placed more confidence and truth in local officials familiar with their problem than in more distant regulators.

Finally, let the industry offer its time and talent to work with and in each state and push for a proper and flexible program at the state level so that understanding and acceptance rather than fear and rejection of the benefits of nuclear energy will prevail to this nation's, as well as this industry's, total good.

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RECOMMENDED BUDGET FOR H.B. #243

	<u>F.Y. 1968</u>	<u>F.Y. 1969</u>
Health Physicist	\$ 11,400	\$ 11,760
Secretary	2,040	4,320
Employee Benefits	1,075	1,302
Travel	2,000	2,000
Advisory Council Expenses	1,500	1,500
 Equipment:		
2 Desks	\$ 340.00	
2 Chairs	160.00	
1 Typewriter	450.00	
1 Stenorette	250.00	
Alpha Survey Meter	<u>600.00</u>	
	1,800	
Misc. Supplies: (Filters, batteries, calibration, etc.)	400	400
Office Supplies & Printing	250	250
Communications	<u>200</u>	<u>200</u>
	\$ 20,665	\$ 21,732
 Total Biennium	\$ 42,397	
Federal	21,199	
State	21,198	

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30,160
15,000
15,160

upon the highways as herein defined unless the contrary shall be established by satisfactory evidence.

Reciprocal
exchange
of data.

(d) Reciprocal exchange of data: The board shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces of the Dominion of Canada, forward to such officials any information which it may have relative to the receipt, storage, delivery, sale, use or other disposition of special fuel by any special fuel dealer or special fuel user, provided such other state or states furnish like information to this state."

Approved: February 21, 1967.

CHAPTER 107

An Act to Amend Section 31-222, R.C.M. 1947, Authorizing Members to Nominate and Change Beneficiaries at Time of and After Retirement; Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. That section 31-222, R.C.M. 1947, be, and the same is hereby amended to read as follows:

Nomination of
beneficiaries.

"31-222. **Nomination of beneficiary.** Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board, and to change the beneficiary in like manner. Such designation and all changes must be filed with the board."

Effective
immediately.

Section 2. This act shall be effective upon its passage and approval.

Approved: February 21, 1967.

CHAPTER 108

An Act to Institute and Maintain in the Board of Health a Regulatory Program for Sources of Ionizing Radiation; to Provide for Compatibility With the Standards

and Regulatory Provisions of the Federal Government for a Single Effective System of Registration of Persons Handling Radioactive Materials or Equipment Using Such Materials; Setting Forth Penalties for Noncompliance.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. **Declaration of policy.** It is the policy of the state of Montana in furtherance of its responsibility to protect the public health and safety:

Declaration
of policy.

(1) To institute and maintain a regulatory program for sources of ionizing radiation so as to provide for compatibility with the standards and regulatory programs of the federal government, a single, effective system of regulation within the state, and a system consistent insofar as possible with those of other states; and

Regulation of
sources of
ionizing radiation.

(2) To institute and maintain a program to permit development and utilization of sources of ionizing radiation for peaceful purposes consistent with the health and safety of the public.

Development and
use of sources of
ionizing radiation.

Section 2. **Purpose.** It is the purpose of this act to provide:

Purpose.

(1) A program of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

Regulation.

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

Orderly
regulation.

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to by-product, source, and special nuclear materials; and

Procedures
for use.

(4) A program to permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public.

Maximum
utilization.

Section 3. **Definitions.** (1) By-product material means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to

By-product
material.

the radiation incident to the process of producing or utilizing special nuclear material.

Ionizing radiation. (2) Ionizing radiation means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons and other nuclear particles but not sound or radio waves or visible, infrared or ultraviolet light.

General license. (3) General license means a license effective pursuant to regulations promulgated by the board of health without the filing of an application to transfer, acquire, own, possess or use quantities of or devices or equipment utilizing quantities of by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General licenses are effective without the filing of applications with the board of health or the issuing of licensing documents to the user.

General licenses effective—when. (4) Specific license means a license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own or possess quantities of, or devices or equipment utilizing quantities of by-product, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

Specific license. (5) Person means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States atomic energy commission, any successor thereto, or federal agencies licensed by the atomic energy commission.

Person. (6) Source material means uranium, thorium or any other material which the board of health or the United States atomic energy commission declares by order to be source material or ores containing one (1) or more of the foregoing materials, in such concentration as the board of health or the atomic energy commission declares by order to be source material after the atomic energy commission has determined the material in such concentration to be source material.

Source material. (7) Special nuclear material means plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the board of health or the United States atomic energy commission, or any successor

Special nuclear material.

thereto declares by order to be special nuclear material or any material artificially enriched by any of the foregoing, but does not include source material.

(8) Registration means the registering by the legal owner, user or authorized representative with the board of health in the manner prescribed by rule or regulation of sources of ionizing radiation.

Registration.

Section 4. State radiation control agency. (1) The board of health is hereby designated as the state radiation control agency.

State radiation control agency—powers of board of health.

(2) In accordance with the laws of the state of Montana, the board of health may employ, compensate and prescribe the powers and duties of such individuals as may be necessary to carry out the provisions of this act.

(3) The board of health may for the protection of the occupational and public health and safety:

(a) Develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation;

Programs.

(b) Develop programs and formulate, adopt, promulgate, and repeal rules and regulations with due regard for compatibility with federal programs for licensing and regulation of by-product, source, radioactive waste materials and special nuclear materials and other radioactive materials. These rules and regulations shall cover equipment and facilities, methods for transporting, handling and storage of radioactive materials, permissible levels of exposure, technical qualifications of personnel, required notification of accidents and other incidents involving radioactive materials, survey methods and results, methods of disposal of radioactive materials, posting and labeling of areas and sources and methods and effectiveness of controlling individuals in posted and restricted areas;

Rules and regulations.

(c) Formulate, adopt, promulgate and repeal rules and regulations relating to control of other sources of ionizing radiation. These rules and regulations shall cover equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys and records;

Control of sources.

Modification
of rules.

(d) Issue such orders or modifications thereof as may be necessary in connection with proceedings under section 5 of this act;

Cooperate with
other agencies.

(e) Advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions and with groups concerned with control of sources of ionizing radiation;

Administration of
financial aid.

(f) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

Research
and study.

(g) Encourage, participate in, or conduct studies, investigations, training, research and demonstrations, relating to control of sources of ionizing radiation;

Collect and
disseminate
information.

(h) Collect and disseminate information relating to control of sources of ionizing radiation, including:

1. Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations;

2. Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this act and any administrative or judicial action pertaining thereto;

3. Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated and proceedings thereon.

Radiation advisory
committee.

Section 5. **Radiation advisory committee.** The board of health shall appoint a radiation advisory committee of five (5) members who represent interested groups in the state. Members of the committee shall serve at the discretion of the board of health and shall be reimbursed for necessary and actual expense incurred in attendance at meetings or for authorized business of the board of health. The committee shall furnish such technical advice as may be required on matters relating to the radiation control program.

Members—
compensation.

Licensing of users.

Section 6. **Licensing and registration of persons handling radioactive materials or equipment using such materials.**

Specific licensing.

(1) The board of health shall provide by rule or regulation for general or specific licensing of persons to receive, possess, or transfer radioactive materials and devices or equipment utilizing such materials. Such rules or regulations shall provide for amendment, suspension, or revocation of licenses pursuant to section 11 of this act;

Application
to contain.

(2) Each application for a specific license shall be in writing and shall state such information as the board of health by rule or regulation may determine to be necessary to decide the technical, insurance and financial qualifications or any other qualification of the applicant as the board of health may deem reasonable and necessary to protect the occupational and public health and safety. The board of health may at any time after the filing of the application and before the expiration of the license, require further written statements and may make such inspections as the board of health may deem necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended or revoked. All applications and statements shall be signed by the applicant or licensee. The board of health may require any applications or statements to be made under oath or affirmation;

Inspections and
written statements.

(3) Each license shall be in such form and contain such terms and conditions as the board of health may by rule or regulation prescribe;

Form.

(4) No license issued pursuant to the provisions of this act and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of;

Non-assignable.

(5) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations or orders issued in accordance with the provisions of this act;

Terms subject to
amendment.

(6) The board of health may require registration and inspection of persons dealing with sources of ionizing radiation which do not require a specific license and may require compliance with specific safety standards to be promulgated by the board of health;

Registration of
persons not
requiring specific
license.

(7) The board of health is authorized to exempt certain users from the licensing or registration require-

Exemptions.

ments set forth in this section when the board of health makes a finding that the exemption of such users will not constitute a significant risk to the health and safety of the public;

Secret processes
not disclosed.

(8) Any report of investigation or inspection, or any information concerning trade secrets or secret industrial processes obtained under this act shall not be disclosed or opened to public inspection except as may be necessary for the performance of the functions of the board of health;

Recognition of
other licenses.

(9) Rules and regulations promulgated pursuant to this act may provide for recognition of other state or federal licenses as the board of health may deem desirable, subject to such registration requirements as the board of health may prescribe.

Inspection.

Section 7. **Inspection.** The board of health or its duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property within the jurisdiction of the board of health, other than a private dwelling, for the purpose of determining whether or not there is compliance with or violation of the provisions of this act and rules and regulations promulgated thereunder, and the owner, occupant, or person in charge of such property shall permit such entry and inspection. Entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

Records—
when required.

Section 8. **Records.** (1) The board of health shall require each person who acquires, possesses or uses a source of ionizing radiation to maintain records relating to its receipt, storage, transfer, or disposal and such other records as the board of health may require, subject to such exemptions as may be provided by rules and regulations;

(2) The board of health shall require each person who acquires, possesses, or uses a source of ionizing radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules and regulations of the board of health. Copies of these records and those required to be kept by subsection (1) of this section shall be submitted to the board of health on request;

(3) The board of health shall adopt reasonable regulations, compatible with those of the United States atomic energy commission, or the national committee on radiation protection, pertaining to reports of exposure of personnel to radiation. Such regulations shall require that reports of excessive exposure be made to the individual exposed and to the board of health, and shall make provision for periodic and terminal reports to individuals for whom personnel monitoring is required;

Regulations
pertaining to
records of
exposure.

Reports.

(4) The provisions of this act shall not be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

Exception.

Section 9. **Federal-state agreements.** (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state;

Federal-state
agreements.

(2) Any person who, on the effective date of an agreement under subsection (1) of this section, possesses a license issued by the federal government shall be deemed to possess the same pursuant to this act, which shall expire either ninety (90) days after receipt from the board of health of a notice of expiration of such license, or on the date of expiration specified in the federal license, whichever is earlier.

Section 10. **Inspection agreements and training programs.** (1) The board of health on behalf of the state of Montana may enter into an agreement or agreements with the federal government, other states or interstate agencies, whereby this state shall perform on a cooperative basis with the federal government, other states or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation;

Inspection
agreements.

(2) The board of health and any other appropriate state agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this act and may make said personnel available for participation in any program or programs of the federal government, other states or interstate agencies in furtherance of the purposes of this act.

Training
programs.

Conflicting laws.

Section 11. **Conflicting laws.** Ordinances, resolutions or regulations now or hereafter in effect of the governing body of a municipality or county relating to by-product, source and special nuclear materials shall not be superseded by this act; provided, that such ordinances or regulations are and shall continue to be consistent with the provisions of this act, amendments thereto, and rules and regulations thereunder.

Administrative procedure and judicial review.

Section 12. **Administration procedure and judicial review.** (1) In any proceeding under this act for granting, suspending, revoking or amending any license, or for determining compliance with, or granting exceptions from, rules and regulations promulgated in accordance with this chapter, the board of health shall first afford an opportunity for a hearing on the record upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding;

Emergency.

(2) Whenever the board of health finds that an emergency exists requiring immediate action to protect the public health and safety, the board of health may, without notice or hearing, issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is deemed necessary to meet the emergency. Notwithstanding any provision of this act to the contrary, such regulation or order shall become effective immediately. Any person to whom such regulation or order is directed shall comply therewith immediately, but, on application to the board of health, shall be afforded a hearing promptly after application has been made. On the basis of such a hearing the emergency regulation or order shall be continued, modified, or revoked within thirty (30) days after such hearing or when the emergency no longer exists.

Hearing.

Prohibited uses.

Section 13. **Prohibited uses.** It shall be unlawful for any person to use, manufacture, produce, or knowingly transport, transfer, receive, acquire, own or possess any source of ionizing radiation unless such person is licensed by or registered with the board of health in accordance with the provisions of this act, rules and regulations issued hereunder.

Impounding of materials.

Section 14. **Impounding of materials.** The board of health shall have the authority in the event of an emer-

gency to impound or order the impounding of sources of ionizing radiation, in the possession of any person who is not equipped to observe or who fails to observe the provisions of this act or any rules or regulation promulgated thereunder.

Section 15. **Exemptions.** This act shall not apply to the following sources or conditions:

Exemptions.

(1) Electrical equipment that is not intended primarily to produce radiation, and that, by nature of design, does not produce radiation at the point of nearest approach at a weekly rate higher than one-tenth (1/10) the appropriate limit for any critical organ exposed. The production testing or production servicing of such equipment shall not be exempt;

Electrical - equipment.

(2) Radiation machines during process of manufacture, or in storage or transit;

Manufacture, transit and storage.

(3) Any radioactive material while being transported in conformity with regulations adopted by the atomic energy commission, or any successor thereto, or the interstate commerce commission, and specifically applicable to the transportation of such radioactive materials;

Transportation.

(4) No exemptions under this section are granted for those quantities or types of activities which do not comply with the established rules and regulations promulgated by the atomic energy commission, or by any successor thereto.

Exemptions excluded.

Section 16. **Penalties.** No person shall acquire, own, possess or use any radioactive by-product material, source material, special nuclear materials or other radioactive materials occurring naturally or produced artificially, without having been granted a license therefor from the board of health or transfer to another or dispose of said materials without first having been granted approval of the board of health therefor, in accordance with the administrative rules and regulations of the board of health.

Penalties.

Any person who violates this section is guilty of a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000), or by confinement in the county jail of not less than thirty (30) days and not more than ninety (90) days, or by both such fine and imprisonment.

Repealing clause.

Section 17. **Repealing clause.** All acts and parts of acts in conflict herewith are hereby repealed.

Approved: February 21, 1967.

CHAPTER 109

An Act Amending Section 59-1105, R.C.M. 1947, and Section 59-1106, R.C.M. 1947, as Amended by Section 5, Chapter 248, Laws of 1965, to Provide for the Investment of the Social Security Contribution Fund in Investments of the Character Authorized for the Long Term Investment Fund, and to Permit the Deposit of Interest Earned Thereon to the Earmarked Revenue Fund, Social Security Division Account, for Use in Administering Sections 59-1101 Through 59-1113, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. Section 59-1105, R.C.M. 1947, is amended to read as follows:

Contribution account—to include.

"59-1105. **Contribution account.** (a) There is hereby established, in place of the fund known as the contribution fund, a contribution account in the agency fund. Such account shall consist of and there shall be deposited in such account:

(1) all contributions, interest and penalties collected under sections 59-1103.1 and 59-1104;

(2) all moneys appropriated thereto by the legislative assembly of the state of Montana; and

(3) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the account and all other moneys received for the account from any other source.

Power and authority of agency over account.

All moneys in the account shall be mingled and undivided. Subject to the provisions of this act, the state agency is vested with full power, authority and jurisdiction over the account, including all moneys and property or securities belonging thereto; *it shall invest the same in investments of the same character as are permitted by section 79-1202 of this code for the investment of moneys*

Investments.

in the long term investment fund and shall credit all interest and income heretofore or hereafter earned thereon in excess of that which, in the judgment of the state agency, may be needed for the purposes set forth in subdivision (b) of this section, to the earmarked revenue fund, social security division account, to be used by it either to defray the costs of administering this chapter, or for distribution pro rata to the contributing state departments, political subdivisions, school districts and instrumentalities, as it may determine, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this act.

Interest.

Necessary acts.

(b) The contribution account shall be used and administered exclusively for the purpose of this act. *Subject to the provisions of subdivision (a) of this section, withdrawals from such account shall be made for, and solely for (A) payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under section 59-1103; (B) payment of refunds provided for in section 59-1103.1; and (C) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.*

Withdrawals—purpose.

(c) From the contribution account the custodian of the account shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section 59-1102.1 and the Social Security Act.

Payments to United States treasury.

(d) The treasurer of the state shall pay all warrants drawn upon the state agency in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

Treasurer to pay warrants.

(e) Each department of the state shall include in its operating budget for the next succeeding fiscal year, prepared and delivered to the controller in accordance with the provisions of law, an estimate of the amount which it will be required to contribute to the contribution account."

Estimated contribution.

Section 2. Section 59-1106, R.C.M. 1947, as amended by section 5, chapter 248, Laws of 1965, is amended to read as follows:

Amending clause.

"59-1106. **Costs of administration.** All costs allocable to the administration of this chapter shall be charged to

Costs of administration.